

UNITED STATES GOVERNMENT

Memorandum

: Mr. Peter B. Bensinger
Administrator

DATE:

DM : Daniel P. Casey
Assistant Administrator for Enforcement

JECT: Central Intelligence Agency

Reason for Memorandum:

During a recent staff meeting the Deputy Chiefs of Operations expressed great concern over the role presently being played by the CIA relative to the gathering of operational intelligence abroad. Since I shared their concern, I also solicited opinions from the three Office of Enforcement Division Chiefs and from the Chief of the International Intelligence Division. All were unanimous in their belief that present CIA programs were likely to cause serious future problems for DEA, both foreign and domestic.

Situation:

The Central Intelligence Agency has recently developed unilateral programs in foreign countries that are a potential source of conflict and embarrassment for DEA and which may have a negative impact on the overall U.S. narcotic reduction effort. (For reference and background, see RD Eyman's Secret Memorandum to the Acting DEA Administrator, dated November 3, 1976, and a Secret Memorandum to the Administrator dated October 21, 1976, from Michael A. Antonelli, Acting Chief, International Policy and Support Division.)

CIA programs, which are frequently broad in scope, rely heavily on the use of electronic surveillance as an intelligence gathering technique. The problems associated with these programs and their attendant use of electronic surveillance have been known to the drug law enforcement community and documented by DEA and its predecessor agency, BNDD, for more than four years. The problem stems from the fact that CIA will not respond positively to any discovery motion. This has on several occasions severely hampered DEA investigations as well as the ability of the Department of Justice to prosecute defendants in these cases. Even when cases have been made entirely independently of CIA information they are still liable to dismissal if the defendants appeared during any CIA electronic surveillance. This problem has a "snowball" effect because quality cases often develop from earlier cases.



Increasing numbers of dismissals of cases against, and refusals to indict, high level traffickers can be expected if these CIA programs continue. In effect, this means that in some instances promising cases will be aborted because CIA involvement makes the prospect of successful prosecution extremely dubious. Many of the subjects who appear in these CIA promoted or controlled surveillances regularly travel to the United States in furtherance of their trafficking activities. Once they surface in a CIA promoted electronic surveillance, they are, regardless of how significant a role they play in the traffic, virtually immune from prosecution in the United States because of the CIA's inability to respond positively to a discovery motion. It is only a matter of time before many of these traffickers learn of the unique status they enjoy as a result of the CIA's activities. The de facto immunity from prosecution which they have will enable them to operate much more openly and effectively. This will, in turn, raise doubts among foreign officials as to the professionalism and expertise of U.S. narcotics enforcement agents.

It has been proposed that the problem of discovery can be eliminated by only using the product of the electronic surveillance in host country prosecutions. This "solution" has little validity since successful prosecution in the countries where the CIA programs are in effect can be questioned on the following grounds: 1. Prosecutions in these countries usually are not effective unless they involve substantive violations; 2. Experience has shown that corruption in judicial and police systems is pervasive and that many violators are never brought to trial while those who are tried and convicted often serve little or no time in prison; 3. Not being able to prosecute certain violators removes the flexibility needed by DEA to make full and effective use of Federal conspiracy laws; 4. Given the sensitivity of CIA's electronic surveillance, there is no reasonable assurance that the information obtained from these surveillances is legally admissible or that disclosure in host country courts may not soon be required.

CIA has requested DEA support in providing telephone numbers as targets for electronic surveillance and, in fact, DEA has complied with this request. This practice is most disturbing because, in effect, it puts DEA in the position of determining which violators will be granted a de facto immunity.

Given the large number of locals involved in the CIA programs and the high level of corruption in countries where the programs are in effect, it is quite possible that the electronic surveillance will be compromised and become public knowledge. Should that happen, direct or indirect DEA participation, or even DEA's awareness of the

CIA activity, may have a deleterious effect on DEA credibility overseas and subject DEA to criticism in this country. It should also be considered that even in the absence of DEA support, disclosure of CIA drug operations or drug intelligence collection activities abroad would adversely impact on DEA credibility since it is widely known that DEA has been mandated as the lead agency in the U.S. drug supply reduction effort.

Recommendation:

Considering the seriousness of the problem it is recommended that all DEA support for CIA electronic surveillance be suspended at once. Further, that DEA at the Administrator level request that CIA adhere to the recommendations of the Domestic Council and focus their narcotic activities on the collection of information related to Strategic Intelligence. In DEA's view, Strategic Intelligence, which generally relates to the external trafficking environment, can be distinguished from operational intelligence which generally pertains to individuals, trafficking networks, or specific drug shipments and/or conveyances. In addition, DEA field personnel should be cautioned not to request any CIA support which might tend to prejudice the domestic prosecution of any drug trafficker.

Deputy Chief of Operations
European/Middle East Section

J. Strickler

Deputy Chief of Operations
Far East Section

John R. Doyle

Deputy Chief of Operations
Latin American Section

Bruce W. Van Meter for Diogenes Salazar

Deputy Chief of Operations
Special Action Section

Gary D. Spring

Deputy Chief of Operations
Domestic East Section

Philip D. Smith

Deputy Chief of Operations
Domestic West Section

David F. Westgate